

Chapter 13 Confirmation Procedures
FOR HONORABLE ELIZABETH E. BROWN
(current as of December 1, 2010)

INTRODUCTION

The following information is intended as a cursory guide to the chapter 13 process.

Counsel should note that personal appearance at the confirmation hearing is *mandatory* if he/she fails to comply with the L.B.R. 3015-1 and/or fails to *timely* file the required documents therein.

Initial confirmation hearings are held approximately 20 days after the 341 meeting of creditors on Wednesday afternoons 1:30 p.m. If a conflict should arise, upon the timely filing of a written request, the Court will reschedule the hearing approximately two weeks. If the Debtor is represented by counsel, the Debtor's attendance is not required at the initial confirmation hearing (the date, time and location of which are located on the Notice of Chapter 13 Bankruptcy Case, meeting of Creditors, & Deadlines, and Notice of Hearing on Confirmation of Chapter 13 Plan) or at any preliminary hearing, unless otherwise ordered. Debtors should consult with their attorney for specific advice.

PLAN FILING AND NOTICING

If the Debtor files a Chapter 13 Plan with the petition, the Court will mail it via first class mail to creditors listed on the Debtor's creditor's address matrix together with the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, and Notice of Hearing on Confirmation of Chapter 13 Plan (Notice to Creditors). The Debtor is responsible for complying with any additional service requirements under Bankruptcy Rules 9014 and 7004, and 11 U.S.C. § 324, and should file an appropriate certificate of service evidencing same with the Court (as applicable). To the extent that the Bankruptcy Rule 7004 service parties/addresses are included in the matrix and service by certified mail is not required, the Debtor need not send additional

notice. The Debtor must also file a certificate of service evidencing compliance with L.B.R. 3015-1(c)(4) if any additional creditors are added subsequent to the filing of the case and service of the Plan.

If the Debtor ***does not*** file a Chapter 13 Plan with the Petition, it is the Debtor's responsibility to mail the Plan (*due to be filed within fourteen days of the petition*), together with a notice to all creditors and interested parties providing the date and time of the meeting of creditors, the date and time of the confirmation hearing, and the deadline (including the specific date) to object to confirmation. The Debtor may mail either the Notice of Meeting of Creditors or use L.B. Form 3015-1.2. The Debtor must file a Certificate of Mailing verifying the mailing within three (3) days. The Court will deny confirmation of the plan and may dismiss the case if the Debtor does not properly file and serve the plan and notice, and/or file a certificate of mailing.

The Court will issue a notice of hearing on confirmation setting forth the specific hearing procedures for this Chambers. Parties are cautioned to read the notice of hearing carefully as it outlines parties' responsibilities and the manner in which they may, or are required to, appear for the initial confirmation hearing. If a Debtor is represented by counsel, Debtor may, but is not required, to appear personally or telephonically for the initial confirmation hearing.

CONFIRMATION PROCESS

1. Continuation of 341 Meeting and Confirmation Hearing

If the 341 Meeting is continued, the Debtor must file a notice of the continued 341 Meeting with the date agreed upon by the Chapter 13 Trustee and the Debtor. The notice must be sent to all creditors and all interested parties. If the 341 Meeting is rescheduled or continued to a date beyond the date set for the confirmation hearing, the Debtor can either appear at the

originally set confirmation hearing or file a motion to continue the hearing. Debtor is advised that the confirmation hearing may not be held less than twenty (20) days after the meeting of creditors is conducted unless the Court determines otherwise (11 U.S.C. § 1324(b)). If the Debtor wishes an earlier confirmation hearing date, Debtor must file a motion requesting an earlier hearing date with the notice of the continued 341 Meeting setting forth cause for the request to shorten time.

If the Plan is uncontested and no further amendments are necessary, Debtor may file a Verification of Confirmable Plan in lieu of filing a motion to continue the confirmation hearing.

2. No Objections Filed

If there are no objections to confirmation, the Debtor must, among other things, affirm that the service requirements of the applicable rules have been met and file a Verification of Confirmable Plan in compliance with L.B.R. 3015-1(f)(1). Upon the timely filing of Debtor's Verification, the Court may confirm the Debtor's Plan and vacate the confirmation hearing without further notice or hearing; or, if the Court has questions, it may conduct the hearing by telephone. The Verification is considered timely if it is filed at least seven days after the 341 Meeting, but no less than four court days before the original confirmation hearing. Parties should check the calendar on the Court's website at www.cob.uscourts.gov or call the Court's case manager at 720-904-7379 the day before the hearing to ascertain whether or not the hearing is vacated.

3. Objections Filed

If objections to confirmation are filed, the Debtor must timely file (*no earlier than the day after the Debtor first attends the 341 meeting and no later than 4 court days prior to the initial confirmation hearing*) a Certificate and Motion to Determine Notice. The Certificate and

Motion to Determine Notice must conform to L.B. Form 3015-1.5

4. Plan Amendments (either in response to Objections or otherwise)

Every effort should be made to file an amended Plan prior to the confirmation hearing.

Where the Debtor has filed an Amended Plan in response to objections prior to the confirmation hearing, Debtor must promptly mail or provide the Amended Plan to the objectors, the Standing Chapter 13 Trustee, and all entries of appearance; not to all creditors. The Court will determine what further notice is appropriate to creditors affected by the Amended Plan or to those against whom relief is sought at the hearing. Plan amendments filed prior to the initial confirmation hearing should not be submitted any sooner than the first day following the date the meeting of creditors is conducted and no later than four court days before the initial confirmation hearing. The Debtor must also file a L.B. Form 3015-1.5 Certificate and Motion to Determine Notice as required by L.B.R. 3015-1(g)(3). The filing of an amended plan *does not* relieve the Debtor of the obligation to timely file a Certificate and Motion to Determine Notice.

The Debtor may also file an Amended Plan prior to the confirmation hearing even though no objections were filed in order to correct an inadvertent error or omission, or as otherwise necessary to meet the Debtor's economic circumstances. The Debtor should provide a copy of the amended Plan to the Chapter 13 Trustee and parties who have entered an appearance and requested notice. The Debtor should also file a T.L.B.R. 3015-1(f)(2) Certificate and Motion to Determine Notice *no earlier than the day after the creditors meeting and no later than four court days before the initial confirmation hearing* setting forth in detail what changes were made to the plan and the impact on creditors, if any. Impact on creditors includes a change in the amount and/or timing of payments and any change to the classification of a particular claim. The Certificate should contain sufficient detail to allow the Court to determine whether or not

additional notice is needed. If the Court is able to determine from the Certificate that no additional notice is necessary, an Order to file a verification of confirmable plan will be issued and no hearing will be held. If the Court is unable to determine from the Certificate whether additional notice is necessary, or a timely Certificate is not filed, the Debtor and/or counsel shall appear at the initial confirmation hearing in person. The Court will determine what further notice is appropriate to creditors affected by the Amended Plan or to those against whom relief is sought at the hearing.

In most cases where an amended plan is filed prior to the first confirmation hearing the Court will issue an Order vacating the initial confirmation hearing and setting deadlines for the mailing of notice and the amended plan or filing of a verification of confirmable plan. In some cases, the Court may also set a further confirmation hearing date. In the event that the initial confirmation hearing is vacated and no new confirmation hearing is set, the Debtor will be required to file and serve a Notice of Filing of Amended Plan and Deadline for Objections Thereto in conformance with L.B. Form 3015-1.7. If a new confirmation hearing is set, the Debtor will be required to file and serve a Notice of Filing of Amended Plan, Deadline for Objection, and Notice of Confirmation Hearing in substantial conformance with L.B. Form 3015-1.8, *except that the Debtor will be required to add language informing parties of how to participate in the hearing by telephone.* The Debtor may check the Court's calendar on the website or contact the Court's case manager at 720-904-7379 the day before the hearing to ascertain whether the confirmation hearing is vacated.

If the initial confirmation hearing is held, the Court will consider the views of the Debtor, the Chapter 13 Trustee, plan objectors and/or other parties-in-interest regarding whether any further plan amendments are necessary, and what, if any, further noticing may be required. After

hearing from the parties, the Court may set a deadline regarding service of the Amended Plan.

If the Court determines that notice and service of the Amended Plan is required, the Debtor shall provide a copy of the Amended Plan together with the Notice of Filing of Amended Plan to the Standing Chapter 13 Trustee, objecting parties, and other creditors and parties as the Court directs. The Court will direct which form of notice should be used in a particular case. This Notice must provide all the pre-hearing deadlines and any hearing date as Ordered by the Court. Failure to do so may result in further delays confirming the Plan or denial of confirmation and dismissal of the case without further notice. Objections to a Plan will be deemed withdrawn when the Court directs that Notice of an Amended Plan be provided to any objectors and other parties in interest as applicable pursuant to L.B.R. 3015-1(e)(4).

If the Court sets a further confirmation hearing and no objections to the Amended Plan are filed, the Debtor shall file a Verification prior to the date of the confirmation hearing set by the Court, and the Court will vacate the hearing. If a Verification is not filed, Debtor/counsel shall appear for the hearing in person. If objections to the Amended Plan are filed but no further confirmation hearing has already been set, the Debtor/counsel shall file a certificate of contested matter as required by L.B.R. 9013-1. Upon filing of a certificate of contested matter, the Court will set a hearing.

The Debtor/counsel shall be prepared to inform the Court how he/she wishes to proceed at the second confirmation hearing. The Court will set an evidentiary hearing or set a deadline for filing and noticing a further amended plan at the time of the hearing. Unless otherwise ordered, amended plans filed after the second confirmation hearing will be required to be served on all parties directed by the Court along with a L.B. Form 3015-1.7 notice in compliance with Bankruptcy Rules 2002(b), 7004 and 9006.

If objections are withdrawn in writing and the Debtor files a Verification 24 hours or more prior to a scheduled hearing, the Court will act on the plan without hearing. If objections are not withdrawn 24 hours prior to the hearing, the parties must appear.

5. No Plan Amendments - Resisting Objections

If objections to confirmation are filed, and the Debtor's Certificate and Motion to Determine Notice indicates that the Debtor intends to resist the objections instead of filing an Amended Plan, the scheduled confirmation hearing (*the date, time and location appearing on the section 341 notice*) which will be used as a status and scheduling conference. Parties may appear by telephone at the status and scheduling conference if the Certificate is filed timely. Parties should check the calendar on the website or call the case manager if there are questions. An evidentiary confirmation hearing and/or briefing schedule, as appropriate, will be set by the Court at the hearing.

6. Other Matters Preventing Confirmation

If the proposed Plan or the Certificate and Motion to Determine Notice indicate that there are other issues that must be resolved before a plan can be confirmed (for example, tax issues), the Court may vacate and continue the initial confirmation hearing. In the event that the other issues require the filing of motion(s) that have not yet been filed (such as §506 Motions), the Court may deny confirmation of the plan and the Order may also set a deadline for filing and service of the necessary motion(s), along with an amended plan and notice.

7. Order

The Debtor must submit a proposed order in the form of L.B. Form 3015-1.9.

8. Colorado Springs/Pueblo Cases

All procedures provided herein are applicable to Colorado Springs/Pueblo matters.

Debtors/counsel shall only be permitted to appear for the initial confirmation hearing telephonically if they timely file all documents required by L.B.R. 3015-1 as defined herein.

9. Post-Confirmation Modification

This division follows the procedure for post-confirmation modification contained in Local Bankruptcy Rule 3015-1(j).

Commentary

Parties are reminded that until the Chapter 13 Trustee waives service by mail, all documents must be sent to her office in paper, as opposed to electronic, form.

Debtors are reminded to file a certificate of service as required by L.B.R. 3015-1(b)(2) and (3) when they file the initial Plan following the commencement of (or conversion to) a chapter 13 case.

All Certificates of Service required under these guidelines must be filed with the Court within three days of the mailing.